

IN THE MATTER OF : BEFORE THE  
DURGE, LLC : HOWARD COUNTY  
 : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER

Request to Modify Board of Appeals Decision and  
Order 06-023N to Correct a Clerical Error

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**ORDER**

In Board of Appeals Case No. BA06-23N, the Hearing Examiner granted the Applicant's petition to enlarge and extend a nonconforming use for a gasoline service station located in a B-1 (Business: Local) Zoning District, pursuant to Section 129 of the Howard County Zoning Regulations (the "Zoning Regulations"). The subject property was 7894 Washington Boulevard (US 1), which is located in the 1<sup>st</sup> Election District at the northeast corner of the intersection of Washington Boulevard and Maryland Route 175 in Elkridge. The Decision and Order consistently referred to the zoning of the subject property as B-1 (Business: Local).

By letter dated October 25, 2007, the Applicant, through its attorney Richard Talkin, is requesting an Order correcting the zoning district reference in the BA 06-023N Decision and Order from B-1 to CAC (Corridor Activity Center). As ground for the correction, the Applicant references an attached e-mail dated October 23, 2007 from Paul Johnson, Deputy County Solicitor, to the Petitioner's attorney, Marsha McLaughlin, the Director of the Department of Planning and Zoning, and the undersigned, among others. According to Mr. Johnson, the Applicant filed the petition after the Property was rezoned from B-1 to CAC in "Comp Lite 2005," a rezoning bill the Zoning Board passed in March 2005. A petition for referendum on the Comp Lite bill by Howard County voters suspended the effect of the bill and the Court of

Special Appeals ultimately invalidated the petition on July 28, 2007. The Office of Law subsequently informed the Department of Planning and Zoning that by operation of law July 28, 2006 was the effective date of the Comp Lite zoning decisions, including the CAC rezoning of the subject property. However, the Hearing Examiner was apparently unaware the change in zoning by operation of law when granting the petition on September 6, 2006.

The Howard County Hearing Examiner Rules of Procedure contain no express rule or mechanism for correcting an unintended clerical error obviously apparent on the face of a Hearing Examiner Decision and Order. However, Section 2.212(c) of the Howard County Board of Appeals Rules of Procedure permit any party on its own initiative or motion to petition the Board to modify its decision in order to correct a clerical error. I therefore conclude the Hearing Examiner Rules of Procedure imply the authority to correct a clerical error in a Hearing Examiner Decision and Order when the error is obviously apparent, as it is here.<sup>1</sup>

Based upon the foregoing, it is this **5<sup>th</sup> Day of November 2007 ORDERED:**

That the Order in Board of Appeals Case Bo. 06-023N granting Durge, LLC's petition to enlarge and expand a nonconforming use for a gasoline service station is **CORRECTED** as follows.

The Board of Appeals Decision and Order in Case No. BA 06-023N is hereby corrected by changing all references to the B-1 (Business: Local) Zoning District therein to the CAC (Corridor Activity Center) Zoning District.

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<sup>1</sup> As set forth in Mr. Johnson's e-mail, the Office of Law concludes this authority is implied in the Hearing Examiner Rules of Procedure.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER

MICHELE L. LEFAIVRE  
Michele L. LeFaivre

Date Mailed: 11/7/07

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.